

DIVISION III

CA06-640

BRIAN S. MILLER, Judge
ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION

DI'ANNE G. HALE-HINES

February 7, 2007

v. APPELLANT

AN APPEAL FROM THE CLARK
COUNTY CIRCUIT COURT
[DR-2002-129]

PAUL F. HALE

HONORABLE JOHN THOMAS,
JUDGE

APPELLEE

REVERSED AND REMANDED

BRIAN S. MILLER, Judge

The Clark County Circuit Court summarily dismissed appellant Di'Anne Hale-Hines's petition for contempt and judgment, which alleged that her ex-husband, appellee Paul Hale, failed to pay two debts as required by their 2002 divorce decree. In his opening statement, Hale's attorney argued that Hale-Hines had signed two documents releasing Hale from the debts and that each document served as an accord and satisfaction. He stated that an accord and satisfaction is a contract and that the parol evidence rule prevented the court from hearing testimony regarding Hale-Hines's intent when she signed the documents. The court agreed and dismissed the case. Hale-Hines now appeals, asserting that the trial court erred (1) in finding that the documents at issue established an accord and satisfaction; (2) in

applying the parol evidence rule; and (3) in granting an oral summary judgment motion. We agree that the trial court erred in summarily dismissing Hale-Hines's petition and, therefore, we reverse and remand this case for trial on the issue of fraud or duress in the inducement.

Hale-Hines and Hale were divorced by decree signed October 8, 2002, and entered December 11, 2002. The decree required Hale to pay Hale-Hines \$5000 to satisfy Hale-Hines's equity in the marital home. Both parties were also required to pay one-half of the marital debts totaling \$8700. Both parties agreed to enter into a debt-consolidation plan to pay off the marital debts, with each being responsible for paying 50% of the monthly payments.

On June 30, 2005, Hale-Hines filed a petition for contempt and judgment, alleging that Hale had failed to pay the \$5000 he owed for her equity in the marital home and that he still owed \$2,066.67 on the consolidated marital debt. In affidavits dated June 23, 2005, Hale-Hines asserted that Hale contacted her in November 2002 and displayed what she thought was a "truthful interest in reconciliation." The couple resumed physical relations and was in the process of reconciling when Hale asked Hale-Hines to sign a receipt showing that he had paid her the \$5000. Hale claimed that the two had to trust each other in order to be in a productive relationship. Hale-Hines signed the receipt, but claims that she never received the money. Approximately one week later, Hale advised Hale-Hines that their relationship would not work because "too much had transpired with the divorce," and that they should just let the "past be the past." When Hale-Hines requested a return of the receipt,

Hale informed her that he had torn it up and had only requested it to see if she would trust him enough to actually give him the receipt.

Hale-Hines also alleged that Hale made payments on the consolidated marital debt during the months of February 2003 through October 2003, but that in November 2003, Hale told her that he would no longer make payments. Hale-Hines begged Hale to continue making payments because the consolidation was in her name and she would be dropped from the program for non-payment. On December 10, 2003, Hale told Hale-Hines that he would provide another December payment if she gave him a note saying that his portion of the consolidation debt was paid in full. Hale-Hines asserts that she signed the note because she “felt the over-whelming pressure of the financial debt” she had on her.

The first document at issue was untitled and dated November 23, 2002. It stated:

This is to confirm that I, DI’ANNE HALE, received from PAUL HALE the sum of \$5000 on this date. This money is to satisfy the settlement offer in the property Division of our Divorce.

The document was signed by both parties. The second document at issue, entitled “RELEASE OF INDEBTEDNESS FOR DEBT CONSOLIDATION,” and signed on December 10, 2003, stated:

This is to serve as a release for your joint indebtedness to the Debt-Consolidation that was ordered in our Divorce. This serves that you have paid your portion in full.

This document was signed only by Hale-Hines. Both documents were notarized, although Hale-Hines does not recall a notary being present at the signing of either document.

This matter was scheduled for hearing on December 12, 2005. During opening statements, Hale's attorney argued that Hale-Hines admitted to signing the two documents; that the two documents constituted accords and satisfactions of the two debts; that an accord and satisfaction is a contract; that the parol evidence rule precluded the court from admitting any evidence to contradict the agreements; and that Hale-Hines could not now claim fraud because she failed to specifically plead it in her petition.

In an order filed January 19, 2006, the court found that the two documents did, in fact, amount to accords and satisfactions constituting contracts between the parties and that the parol evidence rule would not permit testimony to the contrary. The court dismissed Hale-Hines's petition with prejudice and awarded Hale \$500 in attorney's fees. On January 13, 2006, Hale-Hines filed a motion to re-open and allow full hearing on the merits, which was deemed denied on February 13, 2006.

Hale-Hines makes two arguments on appeal. First, she argues that the trial court erred in dismissing her case after applying the doctrine of accord and satisfaction and the parol evidence rule. Second, she argues that the court improperly dismissed the matter in contravention of Rule 56 of the Arkansas Rules of Civil Procedure, which requires the court to allow the opposing party notice and opportunity to respond to a summary-judgment motion.

The standard of review for bench trials is whether the court's findings were clearly erroneous or clearly against the preponderance of the evidence. *Smith v. Eisen*, --- Ark. App.

---, --- S.W.3d --- (Dec. 13, 2006). A finding is clearly erroneous when, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been made. *Hodge v. Hodge*, — Ark. App. —, — S.W.3d — (Dec. 20, 2006). We give special deference to the superior position of the trial judge to evaluate the credibility of witnesses and their testimony; however, we give no deference to the trial judge's conclusions on questions of law. *Id.*

An accord and satisfaction is a settlement in which one party agrees to pay and the other to receive different consideration or a sum less than the amount to which the latter believes he is entitled. *Glover v. Woodhaven Homes, Inc.*, 346 Ark. 397, 57 S.W.3d 211 (2001). Accord and satisfaction is an affirmative defense, and the party asserting it must prove the following elements: (1) proper subject matter; (2) competent parties; (3) an assent or meeting of the minds; and (4) consideration. *Id.* Where a contract is plain and unambiguous on its face, parol evidence is not admissible to contradict or add to the written contract. *Hagans v. Haines*, 64 Ark. App. 158, 984 S.W.2d 41 (1998). The parol evidence rule is a substantive rule of law in which all antecedent proposals and negotiations are merged into the written contract and cannot be added to or varied by parol evidence. *Id.* The premise of the parol evidence rule is that the written agreement itself is the best evidence of the intention of the parties. *Id.* In the absence of fraud, accident, or mistake, a written contract merges and, thereby, extinguishes all prior and contemporaneous negotiations, understandings, and verbal agreements of the same subjects. *Id.*

Hale-Hines argues that she did not have a contractual relationship with Hale because the obligations were “court-ordered to balance the property and debt division resulting from their marital obligations.” Hale-Hines also argues that the two documents in question are not accords and satisfactions, but mere receipts; that receipts are not contractual in nature; and thus, that the parol evidence rule is not applicable in this case.

Hale-Hines cites a number of cases in support of her argument that the parol evidence rule is not applicable to receipts. *See generally Smart v. Owen*, 208 Ark. 662, 187 S.W.2d 312 (1945) (stating that a receipt is only prima facie evidence of its recitals and could be contradicted by other testimony); *Wilson v. Nugent*, 174 Ark. 1115, 299 S.W. 18 (1927) (stating that an instrument could be both a receipt and a contract and the receipt element could be contradicted by parol evidence but the contractual elements could not be varied or contradicted by parol evidence in the absence of fraud); *Nat’l Trust & Credit Co. v. Polk*, 123 Ark. 24, 183 S.W. 195 (1916) (finding that if appellee had purchased property and agreed to pay certain debts as part of the consideration, then a subsequent receipt reciting that the amount therein was in full payment of the price of the stock would not release appellee from the obligations of the contract and was open to contradiction by oral testimony); *Real Estate Bank v. Rawdon*, 5 Ark. 558, (1844) (stating that a receipt is not conclusive evidence of absolute payment); *Humphries v. McCraw*, 5 Ark. 61 (1843) (citing as a general principle that a receipt for money is not conclusive against the person who has signed it and that the claimant may show that the money was never received or that the receipt was given under

a misrepresentation). These cases essentially stand for the proposition that a mere receipt, not under seal, is not subject to the parol evidence rule, and that a receipt with elements of a contract can be contradicted by parol evidence if the plaintiff asserts fraud or mistake.

In the present case, the first document is a receipt, not an accord and satisfaction. The document simply asserts that Hale paid Hale-Hines the \$5000 that he was already legally obligated to pay her. No new contract was formed by this document. The parol evidence rule is not applicable to mere receipts. Hale argues that the release was “under seal” in that it was notarized and that Hale-Hines cannot now allege that she never received the money because she did not specifically plead fraud in her motion for contempt. *See Hames v. Cravens*, 332 Ark. 437, 443, 966 S.W.2d 244, 247 (1998) (stating that fraud must be specifically pled in that the complaint must state some “concealment, misrepresentation, craft, finesse, or abuse of confidence, by which the other is misled”). Although Hale-Hines did not include the word “fraud” in her motion for contempt, she sufficiently pled fraud in her attached affidavit in which she asserted that Hale had not paid her the \$5000 and had asked her to sign the release under the guise of reconciling their relationship. In addition, Hale-Hines alleged that Hale specifically told her that he had disposed of the receipt when she asked for its return and that he stated that he just wanted to see if she would sign it. Further, Hale-Hines alleged that Hale terminated his reconciliation efforts soon after obtaining the documents from Hale-Hines. Hale’s actions, if true, could certainly rise to the level of “misrepresentation,” “concealment,” or “abuse of confidence,” and the court should

have allowed Hale-Hines the opportunity to present testimony to rebut the presumption that she had received the \$5000.

The trial court properly classified the second document as an accord and satisfaction because it released Hale from future payments on the debt consolidation plan in consideration of making two December 2003 payments. While this release could not normally be contradicted by parol evidence, Hale-Hines' affidavit testimony was sufficient to allege duress, and the court erred in refusing to hear testimony on the issue.

For her second point, Hale-Hines argues that the trial court erred in granting what amounted to an improper oral summary-judgment motion. Hale-Hines, however, failed to make this argument to the trial court or in her motion to reopen the case. This court will not entertain arguments made for the first time on appeal. *Hooks v. Pratte*, 53 Ark. App. 161, 920 S.W.2d 24 (1996). In any event, the argument is misplaced, as the trial judge did not grant a motion for summary judgment, but merely granted Hale's oral motion in limine to exclude testimony based on the doctrine of accord and satisfaction and the parol evidence rule.

The trial court improperly classified document number one as an accord and satisfaction. The document is a receipt, and application of the parol evidence rule was in error. Also, while the trial court correctly classified the second document as an accord and satisfaction, the parol evidence rule still did not bar the taking of oral testimony because Hale-Hines's affidavits were sufficient to plead fraud or duress. Under these circumstances, we reverse the judgment and remand.

Reversed and remanded.

ROBBINS and GLOVER, JJ., agree.

